

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CUONG HUY DAO,
Plaintiff,

v.

C. VANHORN, et al.,
Defendants.

Case No. 23-cv-05756 EJD (PR)

**ORDER OF SERVICE; DIRECTING
DEFENDANTS TO FILE
DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against medical staff at Pelican Bay State Prison (“SVSP”) where he was previously housed. Dkt. No. 1. Plaintiff’s motion for leave to proceed in forma pauperis will be addressed in a separate order. Dkt. No. 2.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Plaintiff's Claims

Plaintiff claims Defendants C. Vanhorn (psychiatric technician), A. Gibbs (psychiatric technician), Nurse E. Aumine, and Nurse E. Hassman violated his Eighth Amendment right against cruel and unusual punishment in the post-surgical treatment they each provided for his eyes. Dkt. No. 1 at 4-15. Plaintiff claims he experienced further injury to his eyes and unnecessary pain due to their actions. Id. Plaintiff seeks damages, including punitive. Id. at 3. Liberally construed, Plaintiff's allegations are sufficient to state a claim for deliberate indifference to serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 104 (1976).

CONCLUSION

For the reasons set forth above, the Court orders as follows:

1. The following defendant at PBSP shall be served:
 - a. **C. Vanhorn, Psychiatric Technician**
 - b. **A. Gibbs, Psychiatric Technician**
 - c. **E. Aumine, Registered Nurse**
 - d. **E. Hassman, Registered Nurse**

Service on the listed defendant(s) shall proceed under the California Department of Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve

1 on CDCR via email the following documents: the operative complaint and any attachments
2 thereto, (Dkt. No. 1), this order of service, a CDCR Report of E-Service Waiver form and
3 a summons. The clerk also shall serve a copy of this order on the plaintiff.

4 No later than 40 days after service of this order via email on CDCR, CDCR shall
5 provide the court a completed CDCR Report of E-Service Waiver advising the court which
6 defendant(s) listed in this order will be waiving service of process without the need for
7 service by the United States Marshal Service (USMS) and which defendant(s) decline to
8 waive service or could not be reached. CDCR also shall provide a copy of the CDCR
9 Report of E-Service Waiver to the California Attorney General's Office which, within 21
10 days, shall file with the court a waiver of service of process for the defendant(s) who are
11 waiving service.

12 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for
13 each defendant who has not waived service according to the CDCR Report of E-Service
14 Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205
15 forms and copies of this order, the summons and the operative complaint for service upon
16 each defendant who has not waived service. The clerk also shall provide to the USMS a
17 copy of the CDCR Report of E-Service Waiver.

18 2. No later than **ninety-one (91) days** from the date this order is filed,
19 Defendants shall file a motion for summary judgment or other dispositive motion with
20 respect to the claims in the complaint found to be cognizable above.

21 a. Any motion for summary judgment shall be supported by adequate
22 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
23 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
24 qualified immunity found, if material facts are in dispute. If any Defendant is of the
25 opinion that this case cannot be resolved by summary judgment, he shall so inform the
26 Court prior to the date the summary judgment motion is due.

27 b. **In the event Defendants file a motion for summary judgment, the**
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1 Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate
2 warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See
3 Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).

4 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court
5 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
6 motion is filed.

7 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and
8 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment
9 must come forward with evidence showing triable issues of material fact on every essential
10 element of his claim). Plaintiff is cautioned that failure to file an opposition to
11 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to
12 the granting of the motion, and granting of judgment against Plaintiff without a trial. See
13 Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18
14 F.3d 651, 653 (9th Cir. 1994).

15 4. Defendants shall file a reply brief no later than **fourteen (14) days** after
16 Plaintiff's opposition is filed.

17 5. The motion shall be deemed submitted as of the date the reply brief is due.
18 No hearing will be held on the motion unless the Court so orders at a later date.

19 6. All communications by the Plaintiff with the Court must be served on
20 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true
21 copy of the document to Defendants or Defendants' counsel.

22 7. Discovery may be taken in accordance with the Federal Rules of Civil
23 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
24 Rule 16-1 is required before the parties may conduct discovery.

25 8. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
26 court informed of any change of address and must comply with the court's orders in a
27 timely fashion. Failure to do so may result in the dismissal of this action for failure to
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1 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

2 9. Extensions of time must be filed no later than the deadline sought to be
3 extended and must be accompanied by a showing of good cause.

4 **IT IS SO ORDERED.**

5 **Dated:** March 12, 2024



EDWARD J. DAVILA
United States District Judge